

SUBCHAPTER C : APPLICATION FOR PERMIT

§305.41-305.54

Effective June 5, 1997

§305.41. Applicability.

The sections of this subchapter apply to permit applications required to be filed with the commission for authorization under Texas Water Code Chapters 26, 27 and 28, and Texas Health and Safety Code Chapters 361 and 401.

Adopted May 14, 1997

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§305.42. Application Required.

(a) Any person who is required to obtain a permit, or who requests an amendment, modification or renewal of a permit, shall complete, sign, and submit an application to the executive director, according to the provisions of this chapter.

(b) For applications involving hazardous waste, persons currently authorized to continue hazardous waste management under interim status in compliance with §335.2(c) of this title (relating to Permit Required) and Texas Health and Safety Code §361.082(e) shall apply for permits when required by the executive director. Owners or operators shall be allowed at least six months from the date of request to submit a Part B permit application. Owners or operators of existing hazardous waste management facilities may voluntarily submit Part B of the application at any time. However, owners or operators of existing hazardous waste management facilities must submit Part B permit applications in accordance with the dates specified in 40 Code of Federal Regulations §270.73. Owners or operators of land disposal facilities in existence on the effective date of statutory or regulatory amendments under Texas Health and Safety Code Chapter 361, or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code §6901 et seq., that render the facility subject to the requirement to have a hazardous waste permit must submit a Part B permit application in accordance with the dates specified in 40 Code of Federal Regulations §270.73 and certify that such a facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(c) An application for a new, amended, or renewed radioactive material license under Chapter 336 of this title (relating to Radioactive Substance Rules) shall consist of one signed original and five copies. The executive director may request additional copies. Copies of an application for a license under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste) shall be retained by the applicant for distribution in accordance with written instructions from the executive director.

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§305.43. Who Applies.

(a) It is the duty of the owner of a facility to submit an application for a permit; however, if the facility is owned by one person and operated by another and the executive director determines that special

circumstances exist where the operator or the operator and the owner should both apply for a permit, and for all Texas pollutant discharge elimination system (TPDES) permits, it is the duty of the operator and the owner to submit an application for a permit.

(b) For solid waste and hazardous waste permit applications, it is the duty of the owner of a facility to submit an application for a permit, unless a facility is owned by one person and operated by another, in which case it is the duty of the operator to submit an application for a permit.

§305.44. Signatories to Applications.

(a) All applications shall be signed as follows:

(1) For a corporation, the application shall be signed by a responsible corporate officer. For purposes of this paragraph, a responsible corporate officer means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions rather than to specific individuals.

(2) For a partnership or sole proprietorship, the application shall be signed by a general partner or the proprietor, respectively.

(3) For a municipality, state, federal, or other public agency, the application shall be signed by either a principal executive officer or a ranking elected official. For purposes of this paragraph, a principal executive officer of a federal agency includes the chief executive officer of the agency, or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g. regional administrator of the United States Environmental Protection Agency).

(b) A person signing an application shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(c) For hazardous solid waste permit applications, the owner and operator of a facility must sign the application.

(d) For radioactive material license applications under Chapter 336 of this title (relating to Radioactive Substance Rules), the applicant or person duly authorized to act for and on the applicant's behalf must sign the application.

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§305.45. Contents of Application for Permit.

(a) Forms for permit applications will be made available by the executive director. Except for applications under Chapter 336 of this title (relating to Radioactive Substance Rules), each application for permit shall include the following:

(1) the name, mailing address, and location of the facility for which the application is submitted;

(2) the ownership status as federal, state, private, public, or other entity;

(3) the applicant's name, mailing address, and telephone number;

(4) a brief description of the nature of the business;

(5) the activities conducted by the applicant which require a permit;

(6) a topographic map, ownership map, county highway map, or a map prepared by a registered professional engineer or a registered surveyor which shows the facility and each of its intake and discharge structures and any other structure or location regarding the regulated facility and associated activities. Maps must be of material suitable for a permanent record, and shall be on sheets 8-1/2 inches by 14 inches or folded to that size, and shall be on a scale of not less than one inch equals one mile. The map shall depict the approximate boundaries of the tract of land owned or to be used by the applicant and shall extend at least one mile beyond the tract boundaries sufficient to show the following:

(A) each well, spring, and surface water body or other water in the state within the map area;

(B) the general character of the areas adjacent to the facility, including public roads, towns and the nature of development of adjacent lands such as residential, commercial, agricultural, recreational, undeveloped and so forth;

(C) the location of any waste disposal activities conducted on the tract not included in the application;

(D) the ownership of tracts of land adjacent to the facility and within a reasonable distance from the proposed point or points of discharge, deposit, injection, or other place of disposal or activity;

(E) such other information that reasonably may be requested by the executive director;

(7) a listing of all permits or construction approvals received or applied for under any of the following programs:

(A) Hazardous Waste Management program under the Texas Solid Waste Disposal Act;

(B) Underground Injection Control (UIC) program under the Texas Injection Well Act;

(C) National Pollutant Discharge Elimination System (NPDES) program under the Federal Clean Water Act (CWA) and Waste Discharge program under the Texas Water Code, Chapter 26;

(D) Prevention of Significant Deterioration (PSD) Program under the Federal Clean Air Act;

(E) Nonattainment Program under the Federal Clean Air Act;

(F) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clear Air Act;

(G) ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(H) dredge or fill permits under of the Federal Clean Water Act;

(I) licenses under the Texas Radiation Control Act; and

(J) other environmental permits;

(8) supplementary technical report. A supplementary technical report shall be submitted in connection with an application. The report shall be prepared either by a Texas registered professional engineer, or by a qualified person who is competent and experienced in the field to which the application relates and thoroughly familiar with the operation or project for which the application is made. The report shall include the following:

(A) a general description of the facilities and systems used for or in connection with the collection, transportation, treatment, and disposal of waste, or used in connection with an injection activity;

(B) for each outfall, injection well, place of deposit, or place of disposal:

(i) the volume and rate of disposal of the defined waste or of fluid injection, including appropriate averages, the maximum rates of disposal or injection over representative periods of time, and detailed information regarding patterns of disposal or injection; and

(ii) the physical and chemical properties of the defined waste or the injection fluids; the characteristics of the waste or the injection fluid; the chemical, physical, thermal, organic, bacteriological, or radioactive properties or characteristics, as applicable, described in enough detail to allow evaluation of the water and environmental quality considerations involved;

(C) Such other information as reasonably may be required by the executive director for an adequate understanding of the project or operation, and which is necessary to provide the commission an adequate opportunity to make the considerations required by §331.121 of this title (relating to Class I Wells), §331.122 of this title (relating to Class III Wells), §305.50 of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit), §305.48 of this title (relating to Additional Contents of Applications for Waste Discharge Permits), and Chapter 330, Subchapter E, of this title (relating to Municipal Solid Waste Permit Procedures).

(b) Only one application needs to be filed for each geographical location in which waste is or will be disposed of or discharged from, even though there may be more than one outfall, place of deposit, or other place of disposal covered in the application.

(c) An application for a radioactive material license shall include the information specified in the applicable subchapter of Chapter 336 of this title.

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§305.46. Designation of Material as Confidential.

(a) Certain material submitted to the commission may be determined to be confidential and withheld from public review. The applicant shall identify any material for which confidentiality is requested.

(b) Each claim of confidentiality must be made upon submission of the material with the application, or the material will be considered available for public review.

(c) Reasons of confidentiality include the protection of trade secrets and similar interests which give a person the right to preserve confidentiality of commercial information in order to obtain or retain advantages from any proprietary right in the information. This includes authorizations under 5 United States Code §552(b)(4), 18 United States Code §1905, and special rules cited in 40 Code of Federal Regulations §§2.301-2.309.

(d) The executive director will review each claim of confidentiality. If a claim is not approved, the applicant will be notified and informed whether the material is essential to the application. The applicant may elect to withdraw any material submitted with an application. If the applicant elects to withdraw certain material which the executive director has determined is not confidential, such material will be withheld from public review until withdrawn. Any information withdrawn by or returned to the applicant under this provision shall not be considered by the commission in its decision to grant or deny the application, or by the executive director in preparing a draft permit.

(e) The name and address of an applicant or permittee will not be considered confidential.

(f) For injection well applications, information which deals with the existence, absence or levels of contaminants in drinking water will not be considered confidential.

(g) This section shall not be construed so as to make confidential any effluent data, including effluent data in permits, draft permits, and permit applications; nor shall this section be construed so as to preclude necessary discovery of relevant information by any party to a contested hearing before the commission.

(h) For Texas pollutant discharge elimination system (TPDES) applications, information required by §305.45 of this title (relating to Contents of Application for Permit) will not be considered confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

§305.47. Retention of Application Data.

A permittee shall keep records throughout the term of the permit of data used to complete the final application and any supplemental information.

§305.48. Additional Contents of Applications for Wastewater Discharge Permits.

(a) The following shall be included in an application for a wastewater discharge permit.

(1) The original and one copy of the permit application shall be submitted on forms provided by or approved by the executive director and shall be accompanied by a like number of copies of all technical supplements and attachments.

(2) If the application is for the disposal of any waste into or adjacent to a watercourse, the application shall show the ownership of the tracts of land adjacent to the treatment facility and for a reasonable distance along the watercourse from the proposed point of discharge. The applicant shall list on a map, or in a separate sheet attached to a map, the names and addresses of the owners of such tracts of land as can be determined from the current county tax rolls or other reliable sources. The application shall state the source of the information.

(3) The applicant shall submit any other information reasonably required by the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and federal statutes, including but not limited to the following:

(A) the operator's name, address, and telephone number;

(B) whether the facility is located on Indian lands;

(C) up to four standard industrial codes (SIC) which best reflect the principal products or services provided by the facility.

(b) The following regulations contained in 40 Code of Federal Regulations Part 122, which are in effect as of the date of TPDES program authorization, as amended, are adopted by reference:

(1) Subpart B -- Permit Applications and Special NPDES Program Requirements, §122.21(g), providing application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers;

(2) Subpart B -- Permit Applications and Special NPDES Program Requirements, §122.21(h), providing application requirements for manufacturing, commercial, mining, and silvicultural facilities which discharge only non-process wastewater, except 40 Code of Federal Regulations §122.21(h)(4)(iii), the requirements of which are addressed in §305.126(e) of this title (relating to Additional Standard Permit Conditions for Waste Discharge Permits);

(3) Subpart B -- Permit Applications and Special NPDES Program Requirements, §122.21(i), providing application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities.

§305.49. Additional Contents of Application for an Injection Well Permit.

(a) The following shall be included in an application for an injection well permit:

(1) for Class I wells, as defined in Chapter 331 of this title (relating to Underground Injection Control), the information listed in §331.121 of this title (relating to Class I Wells);

(2) for Class III wells, as defined in Chapter 331 of this title (relating to Underground Injection Control), the information listed in §331.122 of this title (relating to Class III wells);

(3) the manner in which compliance with the financial responsibility requirement of §305.153 of this title (relating to Financial Responsibility) will be attained;

(4) the manner in which compliance with the plugging and abandonment requirements of §331.46 of this title (relating to Plugging and Abandonment Standards) will be attained;

(5) the manner in which compliance with the corrective action requirements of §331.44 of this title (relating to Corrective Action Standards) will be attained;

(6) the manner in which compliance with the post-closure requirements of §331.68 of this title (relating to Post-Closure Care) will be attained;

(7) a letter from the Railroad Commission of Texas stating that the drilling of a disposal well and the injection of the waste into the subsurface stratum selected for disposal will not endanger or injure any oil or gas formation;

(8) for Class III wells, a description of all liquid and solid non-radioactive wastes resulting from mining activities;

(9) a complete delineation of any aquifer or portion of an aquifer for which exempt status is sought; and

(10) any other information reasonably required by the executive director to evaluate the proposed injection well or project, including, but not limited to, the information set forth in the Texas Water Code, §27.051(a).

(b) An application for production area authorization shall be submitted with and contain the following for each production area:

- (1) mine plan;
- (2) a restoration table;
- (3) a baseline water quality table;
- (4) control parameter upper limits;
- (5) monitor well locations; and

(6) other information reasonably required by the executive director to evaluate the application.

(c) An application under this section shall comply with the requirements of §305.50(4)(B) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit).

§305.50. Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit.

Unless otherwise stated, an application for a permit to store, process, or dispose of solid waste shall meet the following requirements.

(1) One original and three copies of the permit application shall be submitted on forms provided by or approved by the executive director and shall be accompanied by a like number of originals and copies of all required exhibits.

(2) Plans and specifications for the construction and operation of the facility and the staffing pattern for the facility shall be submitted, including the qualifications of all key operating personnel. Also to be submitted is the closing plan for the solid waste storage, processing or disposal facility. The information provided shall be sufficiently detailed and complete to allow the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and local air, water, public health and solid waste statutes. Also to be submitted are listings of evidence of non-compliances concerning solid waste management by the permit holder in the preceding five years at the permitted site, listings of evidence of non-compliances concerning solid waste management in the preceding five years at any site owned, operated, or controlled by the applicant in the state of Texas, a summary of the attempts of the permit holder to correct the environmental violations, and an indication of whether the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by the Texas Solid Waste Disposal Act or by any rule of the commission. For purposes of this subsection, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20% of the permit holder or applicant and at least 20% of another business which operates a solid waste management facility.

(3) Any other information as the executive director may deem necessary to determine whether the facility and the operation thereof will comply with the requirements of the Texas Solid Waste Disposal Act and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), shall be included, including, but not limited to, the information set forth in the Texas Solid Waste Disposal Act, §4(e)(13).

(4) An application for a permit, permit amendment, or permit modification to store, process, or dispose of hazardous waste shall be subject to the following requirements, as applicable.

(A) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain any additional information required by 40 Code of Federal Regulations §§270.13 - 270.26, except that closure cost estimates shall be prepared in accordance with 40 CFR §264.142(a)(1), (3), (4), (b), and (c) and §335.178 of this title (relating to Cost Estimate for Closure).

(B) An application for a permit to store, process or dispose of hazardous waste shall also contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the permit and all applicable rules, including, but not limited to, how an applicant intends to obtain financing for construction of the facility, and to close the facility properly. Financial information submitted to satisfy this subparagraph shall meet the requirements of subparagraphs (C) or (D) of this paragraph.

(C) For applicants possessing a resolution from a governing body approving or agreeing to approve the issuance of bonds for the purpose of satisfying the financial assurance requirements of subparagraph (B) of this paragraph, submission of the following information will be an adequate demonstration:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement shall also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure care, and liability coverage in accordance with Title 40 Code of Federal Regulations, Part 264, Subpart H as adopted by reference under §335.152(a)(6) of this title (relating to Standards);

(ii) a certified copy of the resolution; and

(iii) certification by the governing body of passage of the resolution.

(D) For all applicants not meeting the requirements of subparagraph (C) of this paragraph, financial information submitted to satisfy the requirements of subparagraph (B) of this paragraph shall include the applicable items listed under clauses (i) - (vii) of this subparagraph. Financial statements required under clauses (ii) and (iii) of this subparagraph shall be prepared in accordance with generally accepted accounting principles and include a balance sheet, income statement, cash flow statement, notes to the financial statements, and accountant's opinion letter:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement shall also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure care, and liability coverage in accordance with Title 40 Code of Federal Regulations, Part 264, Subpart H as adopted by reference under §335.152(a)(6) of this title (relating to Standards).

(ii) for applicants for which audited financial statements have been prepared the previous two or more years, the following financial statements:

(I) audited financial statements for the previous two years; and

(II) the most current quarterly financial statement prepared according to generally accepted accounting principles.

(iii) for applicants for which audited financial statements have not been prepared the previous two or more years, the following copies of tax returns and financial statements:

(I) copies of tax returns for the previous two years, each certified by original signature of an authorized signatory as being a "true and correct copy of the return filed with the Internal Revenue Service;"

(II) financial statements for the previous two years; and

(III) additionally, an audited financial statement for the most recent fiscal year;

(iv) for publicly traded companies, copies of Securities and Exchange Commission Form 10-K for the previous two years and the most current Form 10-Q;

(v) for privately-held companies, written disclosure of the information that would normally be found in Securities and Exchange Commission Form 10-K including, but not limited to, the following:

(I) descriptions of the business and its operations;

(II) identification of any affiliated relationships;

(III) credit agreements and terms;

(IV) any legal proceedings involving the applicant;

(V) contingent liabilities; and

(VI) significant accounting policies;

(vi) for applications encompassing facility expansion, capacity expansion, or new construction, estimates of capital costs for expansion and/or construction.

(vii) if an applicant cannot or chooses not to demonstrate sufficient financial resources through submittal of the financial documentation specified in clauses (i) through (v) of this subparagraph and who must or chooses to obtain additional financing through a new stock offering or new debt issuance for facility expansion, capacity expansion, or new construction; and for safe operation, proper closure, and adequate liability coverage, the following information:

(I) a financial plan sufficiently detailed to clearly demonstrate that the applicant will be in a position to readily secure financing for construction, operation, and closure if the permit is issued. The submitted financial plan must be accompanied by original letters of opinion from two financial experts, not otherwise employed by the applicant, who have the demonstrated ability to either finance the facility or place the required financing. The opinion letters must certify that the financial plan is reasonable; certify that financing is obtainable within 180 days of final administrative and judicial disposition of the permit application; and include the time schedule contingent upon permit finality for securing the financing. Only one opinion letter from a financial expert, not otherwise employed by the applicant, is required if the letter renders a firm commitment to provide all the necessary financing; and

(II) written detail of the annual operating costs of the facility and a projected cash flow statement including the period of construction and first two years of operation. The cash flow statement must demonstrate the financial resources to meet operating costs, debt service, and financial assurance for closure, post-closure care, and liability coverage requirements. A list of the assumptions made to forecast cash flow shall also be provided.

(E) If any of the information required to be disclosed under §305.50(4)(D) of this section would be considered confidential under applicable law, the information shall be protected accordingly. During hearings on contested applications, disclosure of confidential information may be allowed only under an appropriate protective order.

(F) An application for a modification or amendment of a permit which includes a capacity expansion of an existing hazardous waste management facility shall also contain information delineating all faults within 3,000 feet of the facility, together with a demonstration, unless previously demonstrated to the commission or the United States Environmental Protection Agency, that:

(i) the fault has not experienced displacement within Holocene time, or if faults have experienced displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous wastes will be conducted; and

(ii) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

(G) At any time after the effective date of the requirements contained in Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous

Waste Storage, Processing, or Disposal Facilities), the executive director may require the owner or operator of an existing hazardous waste management facility to submit that portion of his application containing the information specified in 40 CFR §§270.14 - 270.26. Any owner or operator shall be allowed a reasonable period of time from the date of the request to submit the information. An application for a new hazardous waste management facility must be submitted at least 180 days before physical construction of the facility is expected to commence.

(5) An application for a new hazardous waste landfill which is filed after January 1, 1986 must include an engineering report which evaluates the benefits, if any, associated with the construction of the landfill above existing grade at the proposed site, the costs associated with the above-grade construction, and the potential adverse effects, if any, which would be associated with the above-grade construction.

(6) An application for a new hazardous waste landfill, land treatment facility or surface impoundment which is filed after January 1, 1986 which is to be located in the apparent recharge zone of a regional aquifer must include a hydro-geologic report documenting the potential effects, if any, on the regional aquifer in the event of a release from the waste containment system.

(7) Engineering plans and specifications submitted as part of the permit application shall be prepared and sealed by a registered professional engineer who is currently registered as required by the Texas Engineering Practice Act.

(8) After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that stores, processes, or disposes of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. By August 8, 1985, owners and operators of a landfill or a surface impoundment who have already submitted a Part B application must submit the exposure information required by this paragraph. At a minimum, such information must address:

(A) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(B) the potential pathways of human exposure to hazardous wastes or constituents resulting from documented releases; and

(C) the potential magnitude and nature of the human exposure resulting from such releases.

(9) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, or an application for amendment or modification of a solid waste management facility permit to provide for capacity expansion, the application shall also identify the nature of any known specific and potential sources, types, and volumes of waste to be stored, processed, or disposed of by the facility and shall identify any other related information the executive director may require.

(10) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, the application shall also contain the following:

(A) copies of any relevant land use plans, adopted pursuant to the Texas Local Government Code, Chapter 211 (Vernon's Supplement 1991), which were in existence before publication of the notice of intent to file a solid waste permit application or, if no notice of intent is filed, at the time the permit application is filed;

(B) identification of the names and locations of industrial and other waste-generating facilities within one-half mile of the facility in the case of an application for a permit for a new on-site hazardous waste management facility, and within one mile of the facility in the case of an application for a permit for a new commercial hazardous waste management facility;

(C) the approximate quantity of hazardous waste generated or received annually at those facilities described under subparagraph (B) of this paragraph;

(D) descriptions of the major routes of travel in the vicinity of the facility to be used for the transportation of hazardous waste to and from the facility, together with a map showing the land-use patterns, covering at least a five-mile radius from the boundaries of the facility; and

(E) the information and demonstrations concerning faults described under paragraph (4)(F) of this section.

(11) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain information sufficient to demonstrate to the satisfaction of the commission that a proposed hazardous waste landfill, areal expansion of such landfill, or new commercial hazardous waste land disposal unit is not subject to inundation as a result of a 100-year flood event. An applicant or any other party may not rely solely on floodplain maps prepared by the Federal Emergency Management Agency or a successor agency to determine whether a hazardous waste landfill, areal expansion of such landfill, or commercial hazardous waste land disposal unit is subject to such an inundation.

(12) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new commercial hazardous management facility, the application shall also contain the following:

(A) information sufficient to demonstrate whether a burden will be imposed on public roadways by vehicles travelling to and from the facility, including, at a minimum:

(i) the average gross weight of the various types and sizes of such vehicles to be used for transportation of hazardous waste;

(ii) the average number of such vehicles which would travel the public roadways; and

(iii) identification of the roads to be used by vehicles travelling to and from the facility within a minimum radius of 2 1/2 miles from the facility. Such identification must include the major highways nearest the facility, even if they are located outside the 2 1/2 mile radius.

(B) in addition to the requirements of subparagraph (A) of this paragraph, an applicant may submit a letter from the relevant agency of the state, county, or municipality which has the

authority to regulate and maintain roads which states unequivocally that the roads to and from the facility are adequate for the loads to be placed on them by the proposed facility. Such letter will serve as prima facie evidence that the additional loads placed on the roadways caused by the operation of the facility would not constitute a burden and thus would not require that improvements be made to such roadways. Such letter does not, however, obviate the need to submit the information required under subparagraph (A) of this paragraph;

(C) evidence sufficient to demonstrate that:

(i) emergency response capabilities are available or will be available before the facility first receives waste, in the area in which the facility is located or proposed to be located, that has the ability to manage a reasonable worst-case emergency condition associated with the operation of the facility; such evidence may include, but is not limited to, the following:

(I) in addition to the contingency plan required under 40 CFR §270.14(b)(7), provisions specifying procedures and timing of practice facility evacuation drills, where there is a possibility that evacuation of the facility could be necessary;

(II) contracts with any private corporation, municipality, or county to provide emergency response;

(III) weather data which might tend to affect emergency response;

(IV) a definition of worst-case emergencies, e.g., fires, explosions, the Texas Design Hurricane, or the Standard Project Hurricane;

(V) a training program for personnel for response to such emergencies;

(VI) identification of first-responders;

(VII) identification of local or regional emergency medical services and hospitals which have had hazardous materials training;

(VIII) a pre-disaster plan, including drills;

(IX) a mechanism for notifying all applicable government agencies when an incident occurs (i.e., Texas Natural Resource Conservation Commission, Texas Parks and Wildlife, General Land Office, Texas Department of Health, and Texas Railroad Commission);

(X) a showing of coordination with the Local Emergency Planning Committee and any local Comprehensive Emergency Management Plan; and

(XI) any medical response capability which may be available on the facility property; or

(ii) the applicant has secured bonding of sufficient financial assurance to fund the emergency response personnel and equipment determined to be necessary by the executive director to manage a reasonable worst-case emergency condition associated with the facility; such financial assurance may be demonstrated by providing information which may include, but is not limited to, the following:

(I) long-term studies using an environmental model which provide the amount of damages for which the facility is responsible; and

(II) costs involved in supplying any of the information included in or satisfying any of the requirements of clause (i)(I)(XI) of this subparagraph;

(D) if an applicant does not elect to provide its own facilities or secure bonding to ensure sufficient emergency response capabilities pursuant to §335.183 of this title (relating to Emergency Response Capabilities Required for New Commercial Hazardous Waste Management Facilities), the applicant must provide prior to the time the facility first receives waste:

(i) documentation showing agreements with the county and/or municipality in which the facility is located, or documentation showing agreements with an adjoining county, municipality, mutual aid association, or other appropriate entity such as professional organizations regularly doing business in the area of emergency and/or disaster response; or

(ii) demonstration that a financial assurance mechanism in the form of a negotiable instrument, such as a letter of credit, fully paid in trust fund, or an insurance policy, with the limitation that the funds can only be used for emergency response personnel and equipment and made payable to and for the benefit of the county government and/or municipal government in the county in which the facility is located or proposed to be located; and

(E) a written statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining how the applicant intends to provide emergency response financial assurance to meet the requirements of subparagraphs (C) or (D) of this paragraph; and

(F) a summary of the applicant's experience in hazardous waste management and in particular the hazardous waste management technology proposed for the application location, and, for any applicant without experience in the particular hazardous waste management technology, a conspicuous statement of that lack of experience.

(13) An application for a boiler or industrial furnace burning hazardous waste at a facility at which the owner or operator uses direct transfer operations to feed hazardous waste from transport vehicles (containers, as defined in Title 40 Code of Federal Regulations (CFR) §266.11) directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by 40 CFR §266.111 and §335.225 of this title (relating to Additional Standards for Direct Transfer).

(14) The executive director may require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(4)(A) of this title (relating to Conditions to be

Determined for Individual Permits) and §305.127(1)(B)(iii) of this title (relating to Conditions to be Determined for Individual Permits).

Adopted October 23, 1996

Effective November 20, 1996

§305.51. Revision of Applications for Hazardous Waste Permits.

(a) Owners or operators of hazardous waste management facilities, who qualify for interim status pursuant to 40 Code of Federal Regulation Part 270, Subpart G, who have continuing authority to store, process, and/or dispose of hazardous waste pursuant to Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), and who filed a Part A permit application pursuant to 40 Code of Federal Regulations §270.10 shall file a revised Part A application with the executive director for any of the following changes during interim status:

- (1) new hazardous wastes not identified in the original application are stored, processed or disposed of at the facility;
- (2) increases in the design capacity of processes used at the facility occur;
- (3) changes in the processes for management of the waste occur or additional processes are added;
- (4) changes in the ownership or operational control of a facility are made; or
- (5) newly regulated units for the storage, processing, or disposal of hazardous waste are added.

(b) The purpose of this section is to delineate requirements for filing a revised application, not to authorize any changes in facility operation. Changes in facility operations will be reviewed and approved by the executive director. In deciding whether to approve the proposed change, the executive director may consider the requirements set forth in 40 Code of Federal Regulations §270.72. For changes in the ownership or operational control of a facility, the new owner or operator shall submit a revised Part A permit application no later than 90 days prior to the scheduled change and shall also comply with the requirements set forth in 40 Code of Federal Regulations §270.72(d). A permit will be required for the operation of an above-grade landfill not described in a Part A application filed pursuant to §335.43 of this title (relating to Permit Required) prior to the effective date of this section.

(c) Except as specifically allowed under this subsection, changes listed under subsection (a) of this section may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50 percent of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

- (1) changes made solely for the purposes of complying with the requirements of 40 Code of Federal Regulations (CFR) §265.193 for tanks and ancillary equipment;

(2) if necessary to comply with federal, state, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of §3004(o) of the Resource Conservation and Recovery Act (RCRA), as amended;

(3) changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been stored, processed, or disposed of at the facility prior to the effective date of the United States Environmental Protection Agency (EPA) regulation establishing the new listing or identification;

(4) changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan;

(5) changes necessary to comply with an interim status corrective action order issued by the EPA under §3008(h) of the RCRA, as amended, or other federal authority, by an authorized State under comparable state authority, or by a court in a judicial proceeding brought by the EPA or an authorized State, provided that such changes are limited to the storage, processing, or disposal of solid waste from releases that originate within the boundary of the facility;

(6) changes to store or process, in tanks, containers, or containment buildings, hazardous wastes subject to land disposal restrictions imposed by 40 CFR, Part 268 or by §3004 of the Resource Conservation and Recovery Act (RCRA), provided that such changes are made solely for the purpose of complying with 40 CFR, Part 268 or §3004 of the RCRA, as amended; and

(7) addition of newly regulated units under subsection (a)(5) of this section.

Adopted January 30, 1996

Effective February 26, 1996

§305.52. Waste Containing Radioactive Materials.

An application which involves the disposal of a waste containing radioactive materials shall be accompanied by a letter or other instrument in writing from the commission, the Texas Department of Health, or any other appropriate authority stating either that the applicant, or the person delivering the waste containing radioactive materials for disposal by the applicant, has a license from the commission, the Texas Department of Health, or any other appropriate authority governing waste containing radioactive materials; or that the applicant or the person served by the applicant does not need such a license. This section does not apply to applications under Chapter 336 of this title (relating to Radioactive Substance Rules).

Adopted May 14, 1997

Effective June 5, 1997

§305.53. Application Fee.

(a) Except for radioactive material licenses or as specifically provided hereunder, an applicant shall include with each application a fee of \$100.

(1) The permit application fee for each disposal well which will not be authorized to receive hazardous waste is \$25. The fee for each disposal well which will be authorized to receive hazardous waste is \$2,000.

(2) The permit application fee for each solid waste management facility to be used for the storage, processing, or disposal of hazardous waste, the Part B application for which was filed after September 1, 1985, shall be not less than \$2,000 and not more than \$50,000 as calculated in accordance with the following:

(A) site evaluation - \$100 per acre of solid waste facility up to 300 acres; no additional fee thereafter;

(B) process analysis - \$1,000;

(C) facility unit(s) analysis - \$500 per unit;

(D) management/facility analysis - \$500.

(3) For purposes of paragraph (2)(C) of this subsection, each landfill, surface impoundment, incinerator, waste pile, tank, and container storage area shall be considered a facility unit subject to the \$500 per unit fee; except that multiple storage tanks or container storage area identical in type and use will be subject to a single \$500 unit fee.

(4) The permit application fee for water use permits shall be submitted in accordance with §§295.131 - 295.140 of this title (related to Water Use Permit Fees).

(5) The permit application fee for mine shaft permits shall be submitted in accordance with §329.9 of this title (related to Procedures for Applications).

(6) The permit application fees for wastewater disposal permits shall not be less than \$100 and not more than \$2,000 as indicated below:

(A) Agricultural permit applications fees are as follows:

(i) Minor amendments - \$100, and

(ii) New, amendment, and renewal applications \$300.

(B) Domestic wastewater permit application fees are based upon the following flow categories:

(i) minor amendments - \$100;

(ii) new, amendment, and renewal applications less than 50,000 gallons per day - \$300;

(iii) new, amendment, and renewal applications 50,000 to less than 100,000 gallons per day - \$500;

(iv) new, amendment, and renewal applications 100,000 to less than 250,000 gallons per day - \$800;

(v) new, amendment, and renewal applications 250,000 to less than 500,000 gallons per day - \$1,200;

(vi) new, amendment, and renewal applications 500,000 to less than 1,000,000 gallons per day - \$1,600; and

(vii) new, amendment, and renewal applications 1,000,000 and greater gallons per day - \$2,000;

(C) Municipal storm water permit application fees as follows:

(i) minor amendments - \$100, and

(ii) new, major amendments, and renewal applications - \$2,000.

(D) Industrial wastewater permit application fees are based upon the EPA Major/Minor designation and the commission assigned toxicity rating as follows:

(i) minor amendments for minor facilities - \$100;

(ii) minor amendments for major facilities - \$400;

(iii) new, amendment, and renewal applications for minor facilities that are not subject to categorical standards promulgated by EPA (40 CFR Part 400) - \$300;

(iv) new, amendment, and renewal applications for minor facilities that must comply with a categorical standard promulgated by the EPA (40 CFR Part 400) - \$1,200; and

(v) new, amendment, and renewal applications for major facilities - \$2,000.

(7) The fees established by this section are due at the time that the application is filed in accordance with §281.3 of this title (relating to Initial Review), except that for hazardous waste permit applications filed on or after September 1, 1985, but prior to the effective date of paragraph (2) of this subsection are due at the time that the application is forwarded to the chief clerk of the Texas Natural Resource Conservation Commission for purposes of issuance of the notice of application. Unless the recommendation of the executive director is that the application be denied, the commission will not consider an application for final decision until such time as the fees pursuant to paragraph (2) of this subsection are paid.

(b) An applicant shall also include with each application for a new, amended, or modified permit a fee of \$50 to be applied toward the cost of providing required notice. A fee of \$15 is required with each application for renewal. This subsection does not apply to radioactive material licenses.

(c) Each application for a radioactive material license shall be accompanied by the applicable fee. The fee for a license shall be calculated in accordance with Chapter 336, Subchapter B of this title (relating to Radioactive Substance Fees).

Adopted May 14, 1997

Effective June 5, 1997

§305.54. Additional Requirements for Radioactive Material Licenses.

(a) An applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the executive director. References shall be specifically stated, and shall incorporate accurate, legible, and up-to-date information.

(b) An application for a license shall contain proposed written specifications relating to the operations of the facility and any disposition of radioactive material.

(c) If the applicant is a corporation under the Texas Business Corporation Act, written verification (either affidavit or tax receipt) shall be submitted with the application to confirm that no tax owed the State under Chapter 171, Tax Code, is delinquent.

(d) An application shall include information on ownership of the land on which the proposed project will be located, ownership of the proposed facilities, buildings, structures, and equipment, and ownership of properties adjacent to the proposed site.

(e) For applications under Chapter 336, Subchapter G of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities), an application shall include an environmental report containing the results of a one-year pre-operational monitoring program. For a renewal application, the environmental report shall include the results of the operational monitoring program.

Adopted May 14, 1997

Effective June 5, 1997